IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.L.P..No. 201 of 2007()

ST.3426/2005 of J.M.F.C.-I,NEDUMANGAD

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PETITIONER/COMPLAINANT :

SREEKUMARAN,TC NO.10/2059,TRA 61,
SRERAM,THOZHUVANCODE,VATIYOORKAVU P.O,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.D.ASOKAN

RESPONDENTS:

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1. BINDU,W/O.SANTHAPPAN,KUNNIL VEEDU,
CHERUBVACKAL,SREEKARYAM P.O,THIRUVANANTHAPURAM.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MUHAMMED FOR R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 201 of 2007

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Dated this the 5th day of June, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in S.T.No.3426/2005 on the file of the Judicial Magistrate of First Class-I, Nedumangadu. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.1,50,000/- from the petitioner and in discharge of the above debt, she issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. After complying the formalities, the complaint has been filed before the court. To prove the case against the 1st respondent the appellant himself was examined as PW1 and Exts.P1 to P5 were marked. After closing the evidence, the 1st respondent was questioned under section 313 Cr.P.C. She denied the allegations and stated that she neither borrowed any amount from the appellant nor gave Ext.P1 cheque for repayment of any such amount. On the side of the defence, DW1 to DW3 were examined and Exts.D1 to D9 were marked. After considering the entire evidence the trial court found that the 1st was found not guilty of the offence alleged against

her. Hence she was acquitted under section 255(1) Cr.P.C. Aggrieved by the above acquittal order, petition for leave to appeal is filed.

2. The learned counsel for the petitioner submits that the trial court without considering the relevant materials available in the case relied on irrelevant and inadmissible evidence and arrived at a conclusion without application of mind and thus seriously erred in appreciating the evidence in its correct and proper perceptive.

3. After considering the arguments of the learned counsel and after perusing the records made available to this Court, this Court finds that the case set up by the appellant in the complaint has been thoroughly discarded by the trial court on the ground that the 1st respondent had reasonably succeeded to rebut the legal presumption available in favour of the appellant under section 139 of the Negotiable Instruments Act.

4. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires any interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. 201//2007

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ORDER

5-6-2007